

ANDOVER BOARD OF HEALTH
MINUTES
MONDAY, NOVEMBER 17, 2014, 6:00 P.M.
FIRST FLOOR CONFERENCE ROOM
36 BARTLET STREET

The Board of Health Meeting was called to order at 6 p.m. Present were Ms. Candace Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Gopala K. Dwarakanath, M.D., Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **October 20, 2014**

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the Minutes of October 20, 2014 with the following correction:

*-On page 2, under first bullet: ° Mr. Stephen Ryan, Executive Director of NECSA, second sentence, change sentence from “There is only so much space allocated for products and to have to sell more products than they normally do not sell would be problematic...” to “There is only so much space allocated for products and to have to sell **other** products **that** they normally do not sell would be problematic..”*

Unanimous approval.

- **November 7, 2014, Special Meeting**

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the Minutes of the Special Meeting of September 29, 2014 with the following correction:

*-On page 2, Under **II. Adjournment** – Change “Motion by Ms Martin” to “Motion by “**Ms. Kellman**”.*

Unanimous approval.

II. Appointments & Hearings

- N/A

III. Discussion

- **Draft Tobacco Control Regulations Decisions:**

1. **Section 5.0 – Raising the age to purchase tobacco products from 18 to 21 years of age**

All of the Board Members were in agreement to add this amendment to the regulations.

2. **Section 6.12 – Requiring businesses holding a retail Tobacco Sales Permit to also sell at least two types of tobacco cessation products and requiring a prescribed percentage of the display area be devoted to these products** – Andover Town Counsel, Thomas J. Urbelis, concurred with the opinion of Attorney Cheryl Sbarra of the Massachusetts Association of Health Boards that such a provision may violate the Federal Cigarette Labeling and Advertising Act (FCLAA). Mr. Ronald Beauregard, Director of the Healthy Communities Tobacco Control Program stated that under Section 5.2.2 of the current Regulations, establishments selling Tobacco products are required to post 8 ½” x 11” signs that disclose current referral information about smoking cessation.

The Board Members decided unanimously to remove this amendment.

3. **Section 6.13 (a) – Limiting the number of Retail Tobacco Sales Permits to 14** – There was a concern that this amendment did not allow for Grandfathering of businesses that have a current Tobacco license. Mr. Carbone stated that the Board could work with Town Counsel about clarifying the language. Mr. Beauregard, Director of the Tobacco Control Program, stated that if someone buys an establishment they have 60 days to apply for that license. Mr. Carbone stated that if the Board is comfortable with limiting the cap to 14 establishments that can sell tobacco products, all that is needed is to develop the final language with Town Counsel.

The Board Members decided unanimously to keep this amendment with the development of the final language by Town Counsel.

4. **Section 6.13 (b) – Prohibiting any new Retail Tobacco Sales Permit within 500’ of a school** – The Board felt that the language needed to be clarified limiting establishments that sell Tobacco products from being within 500’ of a school. Ms. Martin felt that there was confusion if someone wanted to move from outside the 500’ zone to a new location that is then within 500’ of a school. She stated that in all cases these establishments should not be allowed to be within 500’ of a school, unless they are grandfathered in. Mr. Carbone will work with Town Counsel to develop the final language.

The Board Members decided unanimously to keep this amendment with the development of the final language by Town Counsel.

5. **Section 7.8 – Prohibiting Health Care Institutions, including Pharmacies that provide health Care Services, from selling Tobacco products** – Ms. Martin was concerned with the language in this amendment also, because there are repetitive definitions throughout the Tobacco Regulations. The definition in the regulations state that a Health Care Institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices. Ms. Martin stated that the retail establishments hold most of the licenses and would not be considered a health

care institution. Ms. Martin also stated that not all pharmacies provide health care. Dr. Dwarakanath stated that if an establishment sells prescription drugs, medications, and provides counseling, then is it considered a health care institution. Mr. Beauregard stated that the second sentence in the regulation states that if a retail store also has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, it cannot sell tobacco products. This was put into the regulations for grocery stores and businesses like Wal Mart that have pharmacies in them.

Motion by Dr. Dwarakanath, seconded by Ms. Kellman to keep the amendment for the pharmacy ban as written. Vote taken, approved two to one: Dr. Dwarakanath, Aye, Ms. Kellman, Aye, Ms. Martin, opposed.

- **Sign Home Health VNA Agreement** – Mr. Carbone informed the Board that the Board contracts with the Home Health VNA annually in case we need any of their nurses for backup. Mr. Carbone recommended that Ms. Martin sign the agreement.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to sign the Home Health VNA Agreement. Ms. Martin signed as Chairman. Unanimous approval.

- **Set January Meeting Date** – The Board decided on Monday, January 12, 2014.
- **Ms. Kellman's Resignation from the Board of Health – (not on Agenda)** – Ms. Martin stated that she appreciated Ms. Kellman's contribution to the Board over the past five years. The Board Members will now have to review applications they received in the past from the Talent Bank. Mr. Carbone stated that he has checked through the applications and picked out the people who listed an interest in the Board of Health. Ms. Martin stated that she would be interested in another health care provider, such as a nurse, but would like to review all applicants. Mr. Carbone stated that there were applicants who have financial backgrounds and a Veterinarian as well. Mr. Carbone will send the applications to the Board Members for their review.

IV. Old Business

- **Status Update on Casco Crossing Compliance** – Present was Mr. Stephen Stapinski of Andover Portland Ave. Associates, LLC. Ms. Martin asked Mr. Stapinski why there has been such a delay in getting the remaining Housing Code violations from the Orders of February 27, 2014 (concrete deterioration at the mailboxes and on walkways, and the interface among walkways, curbing and pavement) done before the winter as promised to the Board of Health. Mr. Stapinski stated that there have been several issues with the Architectural Access Board (AAB), the Massachusetts Commission Against Discrimination (MCAD), and the Attorney General's Office (AGO), which has delayed him taking any action. He just received the AAB's decision on this day, Monday, 11/17/2014 and has not had a chance to review it. The AAB and MCAD have decided that the work has to be more extensive than the Board of Health's original orders, so that has caused a delay also. Mr. Stapinski stated that he could not get the concrete installers to do the work before November 1, 2014, so now the work could begin as soon as March 15, 2015, with a completion date of June

15, 2015. Mr. Stapinski stated that the design is done and the survey work is done; he now has to review the AAB's decision. Ms. Martin stated that she was not happy with the delay because the Board had been given assurances that the work would be completed by November 1, 2014. Also, Mr. Carbone provided the Board with an e-mail from the AAB that no extension to the November 1, 2014 date has been requested for the sidewalks and curb cut replacement.

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Hearing until the December 8, 2014 Board of Health Meeting with the expectation to have, by the close of business on November 24, 2014, a written compliance plan that includes the following elements:

- 1. A summary of any actions being brought by other agencies such as the Architectural Access Board (AAB), Massachusetts Commission Against Discrimination (MCAD), and the Attorney General's Office (AGO), as well as ownership's responses to those actions.*
- 2. Key dates of when plans for compliance have been submitted to those agencies, any decisions issued by those agencies, and any compliance deadlines issued by those agencies.*

Dr. Dwarakanath asked to include a timeline and Ms. Martin amended her motion to include the following:

- 3. A proposed compliance timeline, going forward from this date.*
Unanimous approval.

- **Update on Susan Odle Court Case (not on Agenda)** – Mr. Carbone stated that he is due back in Court on Friday. There is still a lot of cleanup work to be done on the property. He spoke with Ms. Odle to help her understand how important it is that she has made so much progress and to not allow all that effort to go to waste.
- **Update on 2 Dufton Road Order for Cleanup to Clarify Vote taken on November 7, 2014 (not on Agenda)** – Mr. Carbone informed the Board that Attorney David D. Christensen sent an email on November 13, 2014, asking the Board to provide clarification to its decision, and to allow an additional day for compliance.

Motion by Dr. Dwarakanath, seconded by Ms. Kellman, to amend its decision so that it reads: After discussion, the Board voted 2 – 0 to uphold the supplemental violation notice and to require compliance by close of business November 21, 2014. The Board ruled that compliance as regards outstanding Sanitary Code citations could be met by U.S. Bank, as Trustee filing a motion to add cross claims in the Land Court proceedings styled Christopher Clemente v. Joseph Boyer, et al., No. 08-MISC-381781, against the occupants of 2-4-6 Dufton Road, Andover, MA to compel the occupants' cooperation with addressing the outstanding Sanitary Code citations.

Vote taken, Ms. Kellman, Aye, Dr. Dwarakanath, Aye, Ms. Martin, Abstained.

V. Subdivision Definitive Plans

- N/A

VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**
 - **20 Blanchard Street – LUA to allow SAS to be 3' Above the Water Table, 4' Required** – Mr. Mark Santora, Engineer, and Mr. John Kattar, owner, were present. Mr. Santora explained that he was requesting the LUA because it would be a burden for the homeowner to have to install a pump system. A previous Engineer had designed a plan with a pump because an accurate elevation of the pipe leaving the house could not be taken because of the location of a concrete slab. Mr. Santora was able to cut the slab and get the measurement he needed to determine that the 3' LUA was the best way to make the system perform with gravity instead of the use of a pump. Mr. Carbone reviewed the plans and with the additional work Mr. Santora did to get the measurements, he recommended approval. He did note that the property is located within the Tewksbury Hospital well Groundwater Protection Overlay District. Mr. Santora reports that he needs to keep at least 9" of cover over the tank, which prevents him from raising it to gain distance to groundwater as the slab prevents proper grading otherwise.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the LUA to allow the SAS to be 3' above the water table where 4' is required. Unanimous approval.

VII. Staff Reports

A. Director's Reports:

- **Important Dates:**
 - December 8, 2014 at 6 p.m. – Board of Health Meeting

B. Nurses' Report for October, 2014 – The Nurses' Report for October, 2014, was for informational purposes only.

C. Inspectors' Reports for October, 2014 – The Inspectors' Reports for October, 2014, were for informational purposes only.

Board Member Reports

- N/A

Adjournment

Motion by, Ms. Martin, seconded by Dr. Dwarakanath, to adjourn at 7:53 p.m. Unanimous approval.